

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Jon D. Gruber, individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

Ryan R. Gilbertson, Michael L. Reger,
Gabriel G. Claypool, Craig M. McKenzie,
Timothy R. Brady, Terry H. Rust, Paul M.
Cownie, David J. Fellon, Gary L. Alvord, &
James L. Thornton,

Defendants.

**JOINT NOTICE OF MOTION AND
MOTION TO DISMISS THE SECOND
AMENDED COMPLAINT FOR
FAILURE TO STATE A CLAIM
UNDER FEDERAL RULE OF CIVIL
PROCEDURE 12(b)(6)**

NOTICE OF MOTION

PLEASE TAKE NOTICE that a hearing will be held on October 20, 2017 at 11:30 a.m.
before the Honorable William H. Pauley III, in courtroom 20B of the Daniel Patrick Moynihan
United States Courthouse, 500 Pearl Street, New York, NY 10007, on the Motion to Dismiss
Plaintiff's Second Amended Complaint submitted by Defendants Ryan R. Gilbertson, Michael L.
Reger, Gabriel G. Claypool, Craig M. McKenzie, Timothy R. Brady, Terry H. Rust, Paul M.
Cownie, David J. Fellon, Gary L. Alvord, and James L. Thornton.

MOTION

Pursuant to Rule 12 of the Federal Rules of Civil Procedure, Defendants hereby move the
Court for an order dismissing Plaintiff's Second Amended Complaint in the above-captioned
action on the ground that the Second Amended Complaint fails to state a claim for which this Court
may grant relief and fails to plead fraud with particularity. The Motion is based upon all of the

pleadings, files, records, and proceedings herein, the memorandum of law and exhibits in support of the Motion, and the arguments of counsel to be made at the hearing.

Dated: August 15, 2017

LINDQUIST & VENNUM LLP

By: s/ K. Jon Breyer
K. Jon Breyer (admitted *pro hac vice*)
jbreyer@lindquist.com
Christopher M. Proczko (admitted *pro hac vice*)
cproczko@lindquist.com
80 South Eighth Street, Suite 2000
Minneapolis, Minnesota 55402-2119
Telephone: (612) 371-3211

Marjorie J. Peerce
peercem@ballardspahr.com
Ballard Spahr LLP
919 Third Avenue, 37th Floor
New York, New York 10022-3915
Telephone: (212) 223-0200

*Attorneys for Defendants Craig M. McKenzie,
Terry H. Rust, Paul M. Cownie, David J. Fellon,
Gary L. Alvord, and James L. Thornton*

Dated: August 15, 2017

DORSEY & WHITNEY LLP

By: s/ James K. Langdon
James K. Langdon (admitted *pro hac vice*)
langdon.jim@dorsey.com
Michael E. Rowe III (admitted *pro hac vice*)
rowe.michael@dorsey.com
50 South 6th Street, Suite 1500
Minneapolis, MN 55402
Telephone: (612) 340-8759

David A. Scheffel
scheffel.david@dorsey.com
Dorsey & Whitney LLP
51 West 52nd Street
New York, New York 10019-6119
Telephone: (212) 415-9200

Attorneys for Defendant Michael L. Reger

Dated: August 15, 2017

MORGAN, LEWIS & BOCKIUS LLP

By: s/ Kenneth M. Kliebard

Kenneth M. Kliebard (admitted *pro hac vice*)

kenneth.kliebard@morganlewis.com

Jane E. Dudzinski (admitted *pro hac vice*)

jane.dudzinski@morganlewis.com

77 West Wacker Drive, Suite 500

Chicago, Illinois 60601

Telephone: (312) 324-1000

Victoria Peng

Victoria.peng@morganlewis.com

Morgan, Lewis & Bockius LLP

101 Park Avenue

New York, New York 10178

Telephone: (212) 309-6000

Attorneys for Defendant Gabriel G. Claypool

Dated: August 15, 2017

FOX ROTHSCHILD LLP

By: s/ Ranelle Leier

Ranelle Leier (admitted *pro hac vice*)

rleier@foxrothschild.com

Carrie Baker Anderson (admitted *pro hac vice*)

cbanderson@foxrothschild.com

2000 Campbell Mithun Tower

222 South Ninth Street

Minneapolis, MN 55402-3339

Telephone: (312) 607-7000

Oksana G. Wright

Fox Rothschild LLP

101 Park Avenue, 17th Floor

New York, New York 10178

Telephone: (212) 878-7900

Attorneys for Defendant Timothy R. Brady

Dated: August 15, 2017

ROCK HUTCHINSON PLLP

By: s/ Troy J. Hutchinson
Troy J. Hutchinson (admitted *pro hac vice*)
thutchison@rockhutchison.com
120 South Sixth Street, Suite 2050
Minneapolis, MN 55402
Telephone: (612) 573-3682

Attorneys for Defendant Ryan R. Gilbertson